

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	
)	
David J. Tolassi)	File No.: EB-FIELDSCR-15-00019567
Licensee of Amateur Station W4BHV)	NAL/Acct. No.: 201532480001
Ringgold, GA)	FRN: 0009319138

FORFEITURE ORDER

Adopted: July 29, 2016**Released: July 29, 2016**

By the Regional Director, Region 2, Enforcement Bureau:

I. INTRODUCTION

1. We impose a penalty of \$1,000 against amateur radio station operator David J. Tolassi for failing to transmit his assigned call sign in the Amateur Radio Service. Failure to transmit call sign information undermines the purpose of the Amateur Radio Service by preventing licensed users from identifying a transmission's source. Mr. Tolassi does not deny that he transmitted on 14.313 MHz on the date in question, but argues that his comments were within the 10 minute window mandated by the rules. Mr. Tolassi also requests cancellation of the *NAL* and substitution of a Warning Letter based upon the fact that similarly situated amateur operators have received multiple warnings before being issued a fine. Considering the entire record and the factors discussed below, we find no reason to cancel, withdraw or reduce the proposed penalty, and we therefore assess the \$1,000 forfeiture the Enforcement Bureau (Bureau) previously proposed.

II. BACKGROUND

2. On June 24, 2015, agents from the Bureau's Atlanta Office (Atlanta Office) used mobile direction finding techniques to locate the source of a signal on 14.313 MHz to Mr. Tolassi's residence.¹ On July 22, 2015, the Bureau issued the *NAL* proposing a \$1,000 forfeiture against Mr. Tolassi for his apparent violation of Section 97.119(a) of the Commission's rules (Rules).² On July 27, 2015, Mr. Tolassi filed a response to the *NAL*.³ In his *NAL Response*, Mr. Tolassi argues that the *NAL* should be cancelled because any comments he made on 14.313 MHz on the date in question were within the 10 minute window prescribed by the Commission's rules.⁴ Mr. Tolassi also contends that the *NAL* should be reduced or cancelled because other amateurs have received non-monetary warning letters for more serious infractions. Mr. Tolassi requests that the Commission issue him a Warning Letter rather than the *NAL* for his violation.

III. DISCUSSION

3. The Bureau proposed a forfeiture in this case in accordance with Section 503(b) of the Act,⁵ Section 1.80 of the Rules,⁶ and the Commission's *Forfeiture Policy Statement*.⁷ When we assess

¹ *David Tolassi*, Notice of Apparent Liability for Forfeiture, 30 FCC Rcd 7350 (Enf. Bur. 2015) (*NAL*). The *NAL* includes a more complete discussion of the facts and history and is incorporated herein by reference.

² *Id.* at 7352, para. 7; C.F.R. § 97.119(a).

³ Response to Notice of Apparent Liability for Forfeiture by David J. Tolassi (July 27, 2015)(*NAL Response*).

⁴ *Id.* at 1.

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

forfeitures, Section 503(b)(2)(E) requires that we take into account the “nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.”⁸ As discussed below, we have fully considered Mr. Tolassi’s *NAL Response*, but find none of the arguments persuasive. We therefore affirm the \$1,000 forfeiture proposed in the *NAL*.

A. The Bureau Established that Mr. Tolassi Failed to Identify

4. Mr. Tolassi maintains that while he did transmit on 14.313 MHz on the date in question, he does not “remember” the content of his transmission and asserts that any comments from his station were within the “window” of 10 minutes due to his “conversation with another ham.”⁹ We disagree. Agents from the Atlanta Office performed close-in direction finding and positively confirmed the source of the transmissions as the address of record for Mr. Tolassi’s amateur station W4BHV. The agents monitored the transmissions from Mr. Tolassi’s station for approximately 15 minutes and heard him transmit without transmitting his assigned call sign during that time. Further, Mr. Tolassi acknowledges that he received a prior warning from the Commission regarding failure to transmit his assigned call sign.¹⁰ Mr. Tolassi had been warned in writing by the Bureau that his failure to properly identify violated the Act and Rules.¹¹ As a result, we affirm the *NAL*’s finding that Mr. Tolassi failed to properly identify his station.¹²

B. The Proposed Forfeiture is Fully Consistent with Commission Precedent

5. Mr. Tolassi also seeks a cancellation of the proposed forfeiture based on his argument that other amateurs were given warnings before being issued fines and that their actions were more egregious than Mr. Tolassi’s failure to identify.¹³ Mr. Tolassi is incorrect in his assertion that he has been treated differently from similarly situated applicants. In August of 2014, Mr. Tolassi received a written warning from the Commission for violating Section 97.119(a) of the Commission’s rules wherein he was advised that if operation of this type reoccurred he could be subject to a monetary forfeiture.¹⁴ After receipt of this warning, Mr. Tolassi again violated the same rule. Indeed, the Bureau firmly established that, on June 24, 2015, Mr. Tolassi failed to properly identify within the 10 minutes prescribed by Section 97.119(a) of the Commission’s rules.¹⁵ Furthermore, as the cases referenced in his *NAL Response* clearly demonstrate, the Commission has consistently interpreted Section 97.119(a) in this context.¹⁶ Therefore we find that the \$1,000 forfeiture issued was an appropriate sanction for Mr. Tolassi’s violation and is fully consistent with

(Continued from previous page...)

⁷ *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) (*Forfeiture Policy Statement*), *recons. denied*, 15 FCC Rcd 303 (1999).

⁸ 47 U.S.C. § 503(b)(2)(E).

⁹ *NAL Response* at 1.

¹⁰ *Id.*

¹¹ Letter to David J. Tolassi, Amateur Radio Licensee W4BVH, from Laura L. Smith, Special Counsel, Enforcement Bureau (Aug. 11, 2014)(Warning Letter).

¹² *NAL*, 30 FCC Rcd at 7350, para.4.

¹³ *NAL Response* at 1.

¹⁴ *See generally* Warning Letter.

¹⁵ 47 C.F.R. § 97.119(a).

¹⁶ *See Brian Crow*, Forfeiture Order, 30 FCC Rcd 168 (Enf. Bur. 2015)(\$1,000 fine for failure to transmit assigned call sign); *Michael Guernsey*, Forfeiture Order, 30 FCC Rcd 7354 (Enf. Bur. 2015) (\$1,000 fine for failure to identify).

prior forfeitures for similar violations.¹⁷

6. Based on the record before us and in light of the applicable statutory factors, we conclude that Mr. Tolassi willfully violated Section and 97.119(a) of the Rules by failing to transmit his assigned call sign.¹⁸ We further find after considering the entire record and the factors listed above, that Mr. Tolassi is liable for a forfeiture in the amount of \$1,000

IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act¹⁹ and Sections 1.80 of the Rules,²⁰ David J. Tolassi is **LIABLE FOR A MONETARY FORFEITURE** in the amount of one thousand dollars (\$1,000) for repeated violations of Section 97.119(a) of the Rules.²¹

8. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) calendar days after the release of this Forfeiture Order.²² If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Act.²³

9. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. David J. Tolassi shall send electronic notification of payment to SCR-Response@fcc.gov on the date said payment is made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²⁴ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions that should be followed based on the form of payment selected:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 270000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank –

¹⁷ See *Ronald E. Sauer*, Forfeiture Order, 19 FCC Rcd 14884 (Enf. Bur. 2004)(\$1,000 forfeiture for repeated failure to identify amateur station); *Scott E. Kamm*, Forfeiture Order, 18 FCC Rcd 9379 (Enf. Bur. 2003) (\$1,000 fine for failure to identify).

¹⁸ 47 C.F.R. § 97.119(a).

¹⁹ 47 U.S.C. § 503(b).

²⁰ 47 C.F.R. § 1.80.

²¹ 47 C.F.R. § 97.119(a).

²² 47 C.F.R. § 1.80.

²³ 47 U.S.C. § 504(a).

²⁴ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

10. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, SW, Room 1-A625, Washington, DC 20554.²⁵ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

11. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by first class mail and certified mail, return receipt requested, to David J. Tolassi at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Ronald Ramage
Regional Director
Region 2
Enforcement Bureau

²⁵ See 47 C.F.R. § 1.1914.